

RECEIVED

2021 NOV -4 PM 3:22

IDAHO PUBLIC  
UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

November 4, 2021

**VIA ELECTRONIC MAIL**

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 West Chinden Blvd., Building 8  
Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-21-30  
MC6 Hydro LLC – MC6 Hydro Project  
Idaho Power Company's Application re the Second Amendment to the  
Energy Sales Agreement

Dear Ms. Noriyuki:

Attached for electronic filing please find Reply Comments of Idaho Power Company in the above entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

Donovan E. Walker

DEW:cld  
Enclosures

DONOVAN E. WALKER (ISB No. 5921)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY FOR	)	CASE NO. IPC-E-21-30
APPROVAL OR REJECTION OF THE	)	
THIRD AMENDMENT TO THE ENERGY	)	REPLY COMMENTS OF
SALES AGREEMENT WITH MC6 HYDRO	)	IDAHO POWER COMPANY
LLC FOR THE SALE AND PURCHASE OF	)	
ELECTRIC ENERGY FROM THE MC6	)	
HYDRO PROJECT	)	
_____	)	

Idaho Power Company (“Idaho Power” or “Company”), in response to the comments filed by Commission Staff (“Staff”), hereby respectfully submits the following Reply Comments.

**I. INTRODUCTION AND BACKGROUND**

On August 26, 2021, Idaho Power filed an application with the Commission for approval or rejection of the Third Amendment (“Amendment”) to its Energy Sales Agreement (“ESA”) with MC6 Hydro LLC (“MC6” or “Seller”). MC6 sells energy to the Company from the MC6 Hydro Project (“Facility”). The Facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. The Amendment that was executed by the Company and MC6 (“Parties”) is to allow the Facility to adjust the monthly Net Energy

Amount (“NEA”) by the 25<sup>th</sup> of each month, and to update the identified nameplate capacity to match the actual turbine that was installed at the project. Section 6.2.3 of the ESA provides the Seller with the option to adjust the monthly estimated NEA within a specified time period. After the execution and approval of the ESA, the Seller requested a change to the time period for making the NEA adjustments, such that they can make adjustments by the 25<sup>th</sup> day of the month preceding the month for which a change is requested. The Commission has previously approved similar amendments to other energy sales agreements to incorporate the same change.

On October 27, 2021, Commission Staff (“Staff”) recommended approval of the provision reflected in the Parties’ Amendment, but also recommended the Commission require *additional* changes to the ESA:

Staff notes the ESA does not contain any provision addressing modifications to the Facility during the contract term. Therefore, Staff recommends updating the Amendment by including the following provision, which has been included in recent PURPA contracts filed by the Company with the Commission:

Any modifications to the Facility, including but not limited to the generator or turbine, that (1) increases or decreases the Facility Nameplate Capacity, or (2) changes the Qualifying Facility Category, or (3) changes the Primary Energy Source or (4) changes to the generator fuel and subsequently the Fueled Rate or Non-Fueled Rate, will require a review of the Agreement terms, conditions and pricing and Idaho Power, at its sole determination, may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any Termination Damages.

The Staff also recommended approval of the provision updating the nameplate capacity from 2.1 MW to 2.3 MW, but also recommends adopting two sets of avoided cost rates and implementing the 90/100 Rule based on two sets of avoided cost rates for the incremental addition of 200 kW.

## II. IDAHO POWER REPLY COMMENT

The Company appreciates Staff's analysis, review, and recommendation to approve both the five-day notification provision and the change in nameplate capacity as provided in the Amendment. However, the Company disagrees with Staff's recommendations to update the Amendment by including an additional provision in the ESA to address modifications of the Facility during the term of the contract. ("Staff Provision") and Staff's recommendation to implement a bifurcated avoided cost rate structure for the incremental 0.2 MW increase in nameplate capacity.

***Future Modifications to Facility Language:*** MC6 requested an amendment to the ESA so that they could adjust the monthly NEA at any point up to the 25<sup>th</sup> day of the preceding month, and to update the nameplate capacity to match the final manufactured hydro turbine. Idaho Power has received numerous such requests to move the NEA forecasts to the 25<sup>th</sup> day of the month from several other QFs, has executed the same change reflected in this Amendment in amendments to the ESAs with other QFs, and received approval from the Commission in each case without modifying other sections of the ESA or updating other sections of the ESA to current "standards". The Company believes that Staff's recommendation to update the ESA by adding the Staff Provision goes beyond the scope of the review and consideration of the Amendment and is inconsistent with Commission practice regarding changes to a previously approved PURPA ESA.

Further, absent a particular reason to do so, it is not appropriate to open up contracts for a *de novo* review and inclusion of new provisions simply because an amendment is requested. Idaho Power has over 100 Commission approved contracts that have been executed over the past 35 years. Many of these contracts will have

numerous provisions that have changed over the years, and that may not have been contemplated when the ESA was originally entered into and agreed to by parties. The Company does not believe it is proper to open up PURPA contracts whenever an amendment is requested and require the parties to update other sections of the contract to the most current language, especially when these other sections have nothing to do with the amendment requested by the Seller.

The Company is willing to include the Staff Provision in any new contracts, and has included such a provision in several, but Idaho Power objects to adding this Provision to a previously approved ESA in the context of the Commission's review of a contract amendment to an unrelated provision.

***Bifurcated Avoided Cost Rates and 90/110 Rule implementation:*** Staff also recommends in this case that the Commission bifurcate the avoided cost rates such that the previously approved avoided cost rate, locked in at the time of contracting only applies to the originally stated 2.1 MW, and a more current avoided cost rate - the one in place at the time of executing the amendment changing the nameplate capacity to 2.3 MW be applied to the incremental 0.2 MW variance in nameplate capacity. Staff also recommends adjustment to the implementation of the 90/110 rule to accommodate for the bifurcated rate.

While Idaho Power appreciates Staff's initiative in theorizing a unique application of avoided cost rate structure to an incremental increase in nameplate capacity, the Company disagrees with Staff's recommendation to adopt two sets of avoided cost rates and implement the 90/100 Rule based on two sets of avoided cost rates in this case. First of all, the change in nameplate capacity in this instance is a relatively minor, or de minimis, change for a hydro generator. Idaho Power does not believe this variance in

nameplate to be a situation in which the developer is playing games or trying to manipulate eligibility and pricing components of the avoided cost rate and contracting process in order to get 200 kW more generation in at a higher avoided cost rate. This variance in nameplate capacity is a common variance that can and does happen in the manufacture of hydroelectric turbines. The situation here is not the same as in other instances where the Commission has bifurcated the eligibility for capacity payment in a replacement contract of a previously existing QF that has replaced or upgraded their generation equipment with that of higher capacity. Here we have a new generator that has not previously been under contract. This particular project's hydro turbine was manufactured in Wuhan, China, and was the subject of the force majeure provisions as discussed in Staff Comments. In the development of a new hydroelectric project such as this, it is common for the developer to review the water resource, the head, and determine approximately what size the plant will be and send such specifications to a manufacturer who will build the generator. The manufacturer will build a generator that is at least 2.1 MW, if that is what was specified, but in the winding of the stator and rotor and manufacturing process things are not necessarily toleranced to a zero deviation standard and it is typical to have some variance above that minimum so that it does not come in under specifications.

Given the understanding and belief that this is not a situation where the developer was acting in bad faith to try and manipulate an additional amount of generation under a previously effective or a higher avoided cost rate, Idaho Power believes that the bifurcated rate and 90/110 implementation should not be directed in this instance. As a comparative example, the Commission has and currently allows QFs to size themselves with a nameplate capacity that can in some instances far exceed the published rate eligibility

cap and still be eligible for published avoided rates if their generation meets the monthly average eligibility cap, for example in the past where a 20 MW wind QF obtains a published rate contract under the 10 average MW standard. Idaho Power finds this type of activity to be much more detrimental to customers, and much more material than a manufacturing variance of 200 kW in the construction of a hydroelectric turbine for a new small hydro QF.

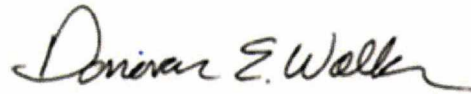
Additionally, given the de minimis nature of the variance and rate impact of the present case in relation to the administrative burden of tracking, maintaining, paying, and implementing such a bifurcated rate and 90/110 provisions, the Company does not support implementation of the bifurcated structure. While Idaho Power appreciates Staff's initiative and thought process in developing a recommendation for a bifurcated rate, or a rate that could be updated during the term of the contract, the Company does not believe the present case under its unique facts, and its posture as being before the Commission on a contract amendment, warrants such a modification. Idaho Power does believe that there may be situations where it may be appropriate and a just and reasonable implementation of avoided cost rates and a PURPA pricing structure whereby the rates that are locked in at the time of contracting can be modified, updated, or otherwise changed through the contract term. However, the Company does not believe that the present situation is one of those instances.

### **III. CONCLUSION**

The Company believes Staff's recommendation to add a facility modification provision is outside the scope of this Amendment. The Amendment as written, is consistent with past amendments to the monthly NEA which the Commission has approved for several QFs without changes to additional provisions. The Company also believes Staff's recommendation to adopt two sets of avoided cost rates and implement

the 90/100 Rule based on two sets of avoided cost rates is not appropriate in this case. Idaho Power respectfully requests that the Commission issue an order approving the Amendment without modification, and without inclusion of the additional Staff Provisions regarding Facility modifications and adjusting the avoided cost rate tables.

Respectfully submitted this 4<sup>th</sup> day of November 2021.

A handwritten signature in black ink that reads "Donovan E. Walker". The signature is written in a cursive style with a horizontal line extending from the end of the name.

---

DONOVAN E. WALKER  
Attorney for Idaho Power Company



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of November 2021, I served a true and correct copy of the within and foregoing REPLY COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

Ted Sorenson  
MC6 Hydro LLC  
711 E Turtle Point Dr  
Ivins UT 84738

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email – [ted@tsorenson.net](mailto:ted@tsorenson.net)

Riley Newton  
Deputy Attorney General  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email – [riley.newton@puc.idaho.gov](mailto:riley.newton@puc.idaho.gov)



---

Christy Davenport, Legal Assistant